IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

MACA.No. 888 of 2006(G)

OPMV.26/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANT/PETITIONER

MARY SAMUEL, W/O.LATE SUNNY GEORGE,
AGED 44 YEARS, KANIYAMPARAMBIL HOUSE,
NEYYUR KARA, MUTHOLI P.O., PALA, NOW RESIDING
AT POOVATHINGAL HOUSE, MUDAKAL THAZHAM,
KOZHIKODE.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:RESPONDENTS
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1. RAMZAN PATTILLATH,
S/O.HASSAINAR.K., RESIDING AT PATTILLATH
HOUSE, PUTHUPPADY KARA, PUTHUPPADY P.O.
2. P.K.MOHAMMED KUNHI, S/O.ANDUMAYI,
KANHANGAD, KANHUNGAD P.O., KOTTACHERY.
3. THE MANAGER, UNITED INDIA INSURANCE
CO.LTD., RAHMATH SHOPPING COMPLEX,
KOTTACHERY, KANHUNGAD.

BY ADV. SRI.M.RAMESH CHANDER
SRI.P.V.JYOTHI PRASAD
SMT.P.VANDANA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19/12/2006 ALONG WITH MACA NO. 887 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M.A.C.A. Nos. 887 and 888 of 2006

Dated: 19th December 2006

JUDGMENT

Krishnan, J.

M.A.C.A. No 887 of 2006 is preferred against the award of the Claims Tribunal, Muvattupuzha in O.P. (M.V) No. 547 of 2001 and M.A.C.A. No 888 of 2006 is preferred against the award of the Claims Tribunal in O.P.(M.V) No 26 of 2001.

2. O.P. (M.V) 547 of 2001 is filed by the legal representatives of the deceased who died in a road accident and the other is filed by the wife of the deceased who has sustained injuries in a road accident. The case of the claimants is that they were travelling from Pala to Kozhikode and when they reached Edappal, a lorry came from the opposite direction in a rash and negligent manner hit on the car which resulted in the death of the driver of the car and sustainment of injury to the petitioner in O.P.(M.V) No 26 of 2001. Tribunal non suited the claimants on the ground that there is nothing to show that the accident had taken place on account of the rash and

negligent driving of the driver of the lorry. It is against that decision the appeals are preferred.

3. Heard both sides.

4. According to the claimants, the car was proceeding from Pala to Kozhikode and when it reached Edappal the lorry came from the opposite direction hit on the car. Accident had taken place at 2.30 A.M in the morning. Tribunal found that the road was having a width of 6.85 metres and the accident had taken place at a distance of 4.05 metres east of the western end of the tarred end and further opined that it was probable that the driver who was tired of driving long distance fell asleep for a moment and it caused the vehicle to go to the wrong side and collided with the lorry. This assumption of the Tribunal is totally unsupported by any materials whereas along with the memorandum of appeal claimants have produced charge sheet whereby driver of the lorry had been charge sheeted under Sections 279, 337, 338 and 304(A) of the Indian Penal Code. This document was not produced by the claimants before the Tribunal and therefore the Tribunal did not have an opportunity to go through the said charge sheet to find out genuineness of the said document. Just because the car slightly went into the wrong side one cannot

jump to the conclusion that the accident had taken place only on account of that reason. Further it may not be always correct to hold that the car that was bound to proceed along the western side of the road has gone to the wrong side and collided with the lorry. It is not known whether the driver had swerved the vehicle in order to avert the accident or to do something to save the life of the people. So it is a case which has to be taken into cosnideration by the Tribual depending upon the facts and circumstances of each case. Therefore we feel that an opportunity has to be given to the claimants to establish that the accident had taken place on account of the negligence on the part of the driver of the lorry. So far as the quantum is concerned we are not expressing any opinion. We therefore award is set aisde and the matter is remanded back to the Tribunal for fresh consideration in accordance with law. Parties are directed to appear before the Tribunal on 27th January 2007.

Sd/-
(K.S. RADHAKRISHNAN,JUDGE)
Sd/-

(M.N.KRISHNAN, JUDGE)

19/12/2006
en/ [true copy]